IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO. 7434 OF 2004
WITH
WRIT PETITION NO. 7435 OF 2004

Indo Nippon Chemical Company Limited ... Petitioner

Vs.

Indu Nissan Oxo Chemical Industries Limited ... Respondent

Mr. A.K. Abhyankar i/by Ms. Asha M. Bhambwani for Petitioner.

Mr. V.A. Thorat, Adv. General with Mr. R.A. Thorat for Respondents.

CORAM : F.I. REBELLO,J.
DATED : JANUARY 11, 2005

P.C.

1. In both the Petitions, respondents have raised preliminary objection that the petitioners have alternate efficacious remedy under Section 42(4) of the Presidency Small Causes Court Act. Section 42(4) reads as under :

> "Where no appeal lies under this sub section from a decree or order in any suit or proceeding, the bench of two Judges specified in sub section (1) may, for the purpose of satisfying itself that the decree or order was according to law, call for the case in which decree or

order was made and pass such order with respect thereto as it thinks fit."

. Writ Petition No. 7434 of 2004 seeks to impugn the order dated 16.6.2004 in Interim Notice No. 3252 of 2003 in R.A.E. Suit No. 1578 of 1998. An application was made in the suit for dismissal of the suit on the ground that the defendants had failed to deposit the amounts as directed in L.C./97/126/2000. That application was rejected by the impugned order.

2. Writ Petition No. 7435 of 2004 is also directed against the order dated 16.6.2004 in Interim Notice No. 503 of 2003 in L.E. & C. No. 97/126/2000 on the ground that the defendants have failed to deposit the amounts as directed and consequently the defence of the defendants be struck off. That was rejected by the impugned order.

3. On behalf of the Petitioner, the learned counsel contends that this court can always exercise its extra ordinary jurisdiction and mere availability of alternative remedy by itself is no answer. It is submitted that the revision would lie only in those cases where no appeal lies. The order to be revisable must decide the rights of the

parties. Apart from that it is submitted that as in both the cases interim applications have been rejected, no right has been decided. It is submitted that only in the event the applications were allowed would the rights be decided and it is only in these circumstances that the revision would be maintainable. The learned counsel has relied o the Judgment of the Division Bench of this Court in the case of Sukhdev Prasad Raghuvir Vs. Rambhujarat Kshamapati 1983 Mh.L.J. 9. That was order passed under the provisions of the Bombay Rents, Hotel and Lodging Houses Rates Control Act where the learned Division Bench of this Court took a view that the expression "Order" in Section 29(3) of that Act will not include in its import the procedural orders which do not affect the rights and liabilities of the parties.

. On the other hand on behalf of the Respondents their learned counsel submits that if the Legislature in its wisdom has provided for revision in respect of those orders which are not appealable, then the expression order will have to include all such orders against which no appeal lies. Specific reliance is placed on the judgment of the learned Single Judge of this Court in the case of The Colaba Central Cooperative Consumer Wholesale and Retail Stores Ltd. Vs. Smt. Kusumben Kantilal Shah & Ors. 2003(4) ALL M.R.

304 which was a matter arising under the provisions of the Presidency Small Causes Court Act and wherein the learned Single Judge has considered the import of Section 42(4) of the said Act. It is also submitted that the law is settled that merely because there is alternative remedy by itself would not result in this court failing to exercise its extra ordinary jurisdiction. In the instant case, it is pointed out that both the parties are residing in Mumbai. There is no requirement that party moving revision has to deposit any money to render the remedy inefficacious and in these circumstances, the Petitioner herein have alternative and efficacious remedy. This court should not exercise its extra ordinary jurisdiction.

4. Having heard learned counsel, in my opinion the interpretation of expression "Order" cannot be read to mean that it is only in those cases where suit is dismissed or defence is struck of that right of parties are decided and not in those cases where after examining the record of the matter the learned Judge comes to the conclusion that it is not a case where either suit should be dismissed or defence should be struck off. In one case the right accrues in favour of the Plaintiff and in other case right accrues in favour of the defendants. It cannot be said that the said orders

are merely procedural, if that aspect has to be considered. Allowing or rejecting an application determines the rights of the parties in that issue. In my opinion, therefore, the expression "order" will have to include both, whether rejecting applications or allowing applications as long as it decides the rights of the parties.

. In the instant case, though application have been dismissed none the less they would constitute orders within the meaning of Section 42(4) of the Act. That being the case, the Petitioners have alternative remedy by way of revision application. The remedy is also efficacious and in these circumstances, the preliminary objection will have to be upheld. Considering the above, as petitioners have alternative and efficacious remedy by way of revision, petitions are rejected.

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(F.I. REBELLO,J.)